Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 85-649

In The
Supreme Court of the United States
October Term, 1985

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, LOCAL 1414, and INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,

Petitioners,

vs.

JOHNNY WARD,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION TO REVIEW

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QUESTION PRESENTED FOR REVIEW

The Petitioners have framed their Question Presented for Review as whether a claim brought under the Longshoremen's and Harbor Workers' Compensation Act, 29 U.S.C. §§ 905(b), 933 arises under the laws of the United States within the meaning of 28 U.S.C. § 1441(b), so as to be heard in federal court without regard to the citizenship of the parties.

It appears to the Respondent that the Petitioners have incorrectly framed the legal issue. Respondent concedes that 29 U.S.C. §§ 905, 933 provides a casue of action under federal law. However, the true question for review would seem to be:

Are a longshoreman's state common law causes of action against a defendant other than a vessel, when joined with a cause of action against the vessel under the Longshoremen's and Harbor Workers' Compensation Act, 29 U.S.C. §§ 905, 933, not remandable to the state court under the "saving to suitors" clause of 28 U.S.C. § 1333 (1) when the action under the Longshoremen and Harbor Workers' Compensation Act have been extinguished by exoneration?

TABLE OF CONTENTS

	Page
Question Presented For Review	i
Table of Authorities	iii
Statement Of The Case	1
Summary Of The Argument	3
Argument	4

TABLE OF AUTHORITIES

Page

CASES

Brough v. United Steelworkers of America, AFL-CIO, 437 F.2d 748 (1st Cir. 1971) 6

Scindia Steam Navigation Co. v. Santos, 451 U.S. 156 (1981) 2

Watkins v. Grover, 508 F.2d 920 (9th Cir. 1974) 6

STATUTES

28 U.S.C. § 1333(1) 2, 3, 5

29 U.S.C. § 933 4

28 U.S.C. § 1441 6

33 U.S.C. § 905(b) 2, 3, 4, 6

46 U.S.C. §§ 183-189 2

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STATEMENT OF THE CASE

Respondent JOHNNY WARD was a longshoreman who was injured aboard the M/V OSWEGO PLANTER

on May 26, 1981. Respondent WARD and his wife filed suits in the Superior Court of Chatham County, Georgia, on September 25, 1981, claiming negligence on the part of the vessel interests under 33 U.S. Code § 905(b). Both WARD and his wife also filed suit against several other named defendants, including the petitioners for the instant writ, alleging causes of action under Georgia law. Owners and operators of the ship filed a Petition for Exoneration from or Limitation of Liability, pursuant to 46 U.S. Code §§ 183-189, in the United States District Court for the Southern District of Georgia following removal of the two suits to that forum.

The exoneration/limitation proceeding went to trial before the District Court, sitting without a jury, on January 30, 1984 and was completed on February 2, 1984.

On March 23, 1984, the District Court rendered comprehensive finding of fact and conclusions of law, ruling that there was no negligence on the part of the vessel interests under the applicable legal standard set forth by this Honorable Court in *Scindia Steam Navigation Co. v. Santos,* 451 U.S. 156 (1981), and subsequent appellate decisions based on *Scindia.*

The Respondent WARD and his wife had previosuly moved to remand their causes of action brought under state law back to the state court. On May 21, 1985, the district court remanded the two actions to the state court, finding that their claims against the remaining defendants including the petitioners here, were not derived from a federal statute as the petitioners here contend, but were asserted as negligence claims under general maritime law and under state common law. The district court decided that under the "savings to suitors" clause of 28 U.S.C.

§ 1333 that the plaintiffs-respondents should not be thwarted in their desire to have their common law actions heard in the original state court where trial by jury could be had.

The Petitioners then filed for a Writ of Certiorari with this Court.

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SUMMARY OF THE ARGUMENT

Petitioners seem to argue that once a plaintiff joins any state cause of action with an action under the Longshoremen and Harbor Workers' Compensation Act, the two distinct causes of action "merge" and become one action, federal in nature, subject only to a hearing in a federal district court. This is simply incorrect. It seems that the Petitioners' error is in believing that state common law actions for negligence are swallowed up by an action brought against a vessel under the 1972 amendments to the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 905(b) and that even when suit against the vessel is extinguished by exoneration, the state actions remain converted into federal claims.

In truth, once a federal claim is extinguished leaving only state common law negligence actions, it is only proper that these state claims be heard in the state court where originally filed and where a trial by jury may be had. Once Respondent WARD's federal cause of action was decided by the federal district court, leaving the Respondent with only his state common law negligence actions remaining, the case was correctly remanded to the state court under 28 U.S.C. § 1333 (1) which declares that:

> The district courts shall have original jurisdiction exclusive of the courts of the States of:
>
> (1) Any civil case of admiralty or maritime jurisdiction, *saving to suitors in all cases all other remedies to which they are otherwise entitled.* (Emphasis supplied).

Petitioners' argument that an action under the Longshoremen's and Harbor Workers' Compensation Act is one distinctly federal in character arising under the laws of the United States so as to come within the original jurisdiction of the federal district courts and thus be properly removable, simply "misses the boat." It matters not whether a claim brought under § 905(b) of the LHWCA arises under the laws of the United States, because there no longer exists such a claim by the plaintiff-respondent. Only state causes of action remain for the plaintiff-respondent to pursue, and the district court rightfully decided these causes of action could best be heard by the state court where the plaintiff-respondent would also receive a trail by jury. .

ARGUMENT

Respondent WARD'S original complaint was brought under a 1972 amendment to the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 905(b):

> In the event of injury to a person covered under this Act caused by the negligence of a vessel, then such person, or anyone otherwise entitled to recover damages by reason thereof, *may bring an action against such vessel* as a third party in accordance with the provisions of section 33 of this Act [33 USCS § 933], and the employer shall not be liable to the vessel for

> such damages directly or indirectly and any agreements or warranties to the contrary shall be void. If such person was employed by the vessel to provide stevedoring services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing stevedoring services to the vessel. If such person was employed to provide shipbuilding, repairing, or breaking services and such person's employer was the owner, owner pro hac vice, agent, operator, or charterer of the vessel, no such action shall be permitted, in whole or in part or directly or indirectly, against the injured person's employer (in any capacity, including as the vessel's owner, owner pro hoc vice, agent, operator, or charterer) or against the employees of the employer. The liability of the vessel under this subsection shall not be based upon the warranty of seaworthiness or a breach thereof at the time the injury occurred. *The remedy provided in this subsection shall be exclusive of all other remedies against the vessel* except remedies available under this Act. (Emphasis supplied.)

The complaint was also brought under Georgia common law negligence. A number of defendants were named, but all the defendants named liable by reason of being affiliated with the vessel were exonerated from liability, leaving the Petitioners as the only defendants left named in the surviving action, none of whom are sued under the above-cited statute as none are affiliated with the vessel upon which the Respondent was injured.

Once there had occurred exoneration for the vessel, the district court, *sua sponte*, remanded the remaining state causes of action to the state court under the "saving to suitors" clause of 28 U.S.C. § 1333 (1). *Supra.* Jurisdiction of the state law actions was best had by the state court where the claim was originally filed and where the plaintiff [Respondent] could receive his requested trial by jury.

Indeed, once the federal district court had extinguished by exoneration the claims brought under 33 U.S.C. 905(b) and released all defendants but the Petitioners, there was no claim arising under the laws of the United States pursuant to 28 U.S.C. § 1441(b) for the Court to hear (and the Petitioners have conceded in their petition that complete diversity under the same statute was lacking). Thus, any basis for federal jurisdiction had disappeared. If removal was proper, but the claim or party that was the basis for jurisdiction was eliminated from the case, it is discretionary with the Court whether to hear other claims presented by the case or to remand the remaining claims and parties. *Watkins v. Grover,* 508 F.2d 920 (9th Cir. 1974); *Brough v. United Steelworkers of America, AFL - CIO,* 437 F.2d 748 (1st Cir. 1971).

Therefore, for all the above reasons, it is respectfully submitted that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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